



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 271 and 272

[EPA-R08-RCRA-2016-0174; FRL -9947-06-Region 8]

#### Wyoming: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The State of Wyoming has applied to Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final action. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of State statutes and regulations that will be subject to the EPA's inspection and enforcement. This rule also codifies in the regulations the approval of Wyoming's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations.

**DATES:** This rule is effective on [insert date 60 days after the date of publication in the Federal Register] unless the EPA receives adverse written comment by [insert date 30 days after the date of publication in the Federal Register]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT date 60 days after publication in the Federal Register]. If the EPA receives adverse comment, it will publish a timely withdrawal of this direct final rule in the Federal

Register and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R08-RCRA-2016 - 0174** by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *Email:* [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov).
3. *Fax:* (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).
4. *Mail, Hand Delivery or Courier:* Christina Cosentini, Resource Conservation and Recovery Program, EPA Region 8, Mailcode 8P-R, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. **EPA-R08-RCRA-2016-0174**. The EPA's policy is that all comments received will be included in the public docket without change and may be available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov*, or email. The Federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at: EPA Region 8, from 8 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312-6231, or the Wyoming Department of Environmental Quality, from 9 a.m. to 5 p.m., Solid and Hazardous Waste Division, 200 W. 17<sup>th</sup> St., 2nd Floor, Cheyenne, Wyoming 82002. The public is advised to call in advance to verify business hours.

**FOR FURTHER INFORMATION CONTACT:** Christina Cosentini, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202; phone number (303) 312-6231; Email address: [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Authorization of Revisions to Wyoming's Hazardous Waste Program**

**A. Why are revisions to State programs necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent

with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. When states make other changes to their regulations, it is often appropriate for the states to seek authorization for the changes.

**B. What decisions have we made in this rule?**

We conclude that Wyoming's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Wyoming final authorization to operate its hazardous waste program with the changes described in the authorization application. Wyoming has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA), for all areas within the State, except for "Indian country" as defined in 18 U.S.C. section 1151.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Wyoming, including issuing permits, until Wyoming is authorized to do so.

**C. What is the effect of this authorization decision?**

The effect of this decision is that a facility in Wyoming subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in

order to comply with RCRA. Wyoming has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and,
- Take enforcement actions regardless of whether Wyoming has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Wyoming is being authorized by this direct action are already effective under State law and are not changed by this action.

**D. Why is the EPA using a direct final rule?**

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to authorize the State program changes if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

**E. What happens if EPA receives comments opposing this action?**

If the EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

**F. For what has Wyoming previously been authorized?**

Wyoming initially received final authorization on October 4, 1995, effective October 18,

1995 (60 FR 51925) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on February 25, 1999, effective August 6, 2001 (56 FR 15503); however, this authorization was subsequently withdrawn on April 23, 1999 (64 FR 19925) and re-issued with the initial effective date of August 6, 2001 (66 FR 40911).

After the 2001 authorization, the State of Wyoming repealed the existing text of the State's hazardous waste regulations and replaced it with text that incorporates by reference the Federal regulations in 40 CFR part 124, subparts A, B., and G, and parts 260 through 268, 270, 273, and 279 in the Wyoming Department of Environmental Quality Hazardous Waste Management Rules, Chapter 1, General Provisions, effective March 18, 2015.

The incorporation by reference (IBR) format for the rules allows the State of Wyoming to provide a more concise, easy to use set of rules that details the differences between the Federal and State rules. The IBR format also shows in detail which Wyoming rules are more stringent than, or broader in scope than, the Federal hazardous waste regulations. The new rules were presented to the Wyoming Water and Waste Advisory Board (WWAB) in July 2014 and the WWAB recommended that the rules package could move forward to the Wyoming Environmental Quality Council (EQC) in September 2014. The State's new rules were presented to the EQC on January 15, 2015, and were approved unanimously by the EQC on the same day. A total of two public notices in June and July 2014 and October through December 2014 were conducted as part of the State rule-making process. The rules were finalized for the purposes of State adoption on March 31, 2015. Wyoming has adopted Federal rules promulgated through January 31, 2014 (date certain) in Title 40 of the Code of Federal Regulations (40 CFR), with the exceptions detailed in its Hazardous Waste Management Rules and Consolidated Checklists submitted by the State as part of its authorization application package. For detailed information

regarding the regulatory transition, see the Wyoming Department of Environmental Quality Hazardous Waste Program, Program Description for Revision 6 Request for Reauthorization, dated May 22, 2015, as revised November 24, 2015; specifically, Attachment D: *General Correspondence Between Previous State Rules, Current State IBR Rules, and Federal Rules* and Attachment E: *General Correspondence Between Previous State Rules, Current State IBR Rules And Federal Statutes*.

As a result of the State's adoption of the IBR format, Wyoming is seeking reauthorization for the hazardous waste regulatory program administered by the DEQ, as authorized under the Federal Resource Conservation Recovery Act (RCRA), and addressed in the following authorization Federal Register actions: 60 FR 51925 (October 4, 1995) and 66 FR 40911 (August 6, 2001). Wyoming is also seeking authorization for the Federal rule published on February 9, 1995 (60 FR 7824), as amended on April 17, 1995 (60 FR 19165) and May 12, 1995 (60 FR 25619) [Revision Checklist 140]), and specific Federal rules promulgated from March 26, 1996 through January 31, 2014. The State hazardous waste program for which authorization is sought does not include a request for authorization on Indian lands within the State.

**G. What changes are we authorizing with this action?**

Wyoming submitted a final complete program revision application on February 4, 2016, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action that Wyoming's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Wyoming final authorization for the program modifications contained in the State's program revision application, which includes State regulatory changes that are no less stringent than the Federal hazardous waste regulations as they

appear in the 40 CFR, revised as of January 31, 2014, except for the final rules published on May 15, 2000 (65 FR 30886; Checklist 186), April 22, 2004 (69 FR 21737, as amended on October 25, 2004 69 FR 62217; Checklist 204); April 4, 2006 (71 FR 16862; Checklist 213); October 30, 2008 (73FR64668; Revisions to the Definition of Solid Waste; Checklist 219); and December 19, 2008 (73 FR 77954, Checklist 221). The State requirements from its Department of Environmental Quality Hazardous Waste Rules and Regulations (HWRR), effective March 18, 2015, are included in the chart below.

Description of Federal requirement	Analogous state authority <sup>1</sup>
1. 40 CFR part 124, subpart A (except Sections 124.1, 124.4, 124.5(c), 124.5(e)-(g), 124.6(c), 124.6(d)(4)(ii)-(v), 124.8(b)(3), 124.8(b)(8), 124.9(b)(6), 124.10(a)(1)(iv)-(v), 124.10(c)(1)(iv)-(viii), 124.10(c)(2)(i), 124.10(d)(1)(vii)-(viii), 124.10(d)(2)(iv), 124.12(b), 124.15(b)(2), 124.16, 124.18(b)(5), 124.19, and 124.21); subpart B (except the fourth sentence of 124.31(a), the third sentence of 124.32(a), and the second sentence of 124.33(a)); and subpart G (except 124.204(d)(1) and (4), 124.205(a) and (h)).	HWRR, Chapter 1, Sections 2(a) and 124. [More stringent provisions: 124(a)(v); 124(b)(i); 124(b)(iii) second sentence; 124(b)(iii)(A) through (C); 124(b)(iv); 124(d)(i); 124(d)(ii); and 124(e)(iii).]
2. 40 CFR part 260, except for the following provisions: 260.2, 260.10 (definitions of “Performance Track member facility”, “remediation waste management site”, and the third part of the definition for “facility”), 260.20(d) and (e), and the October 30, 2008 Definition of Solid Waste, (73 FR 62668).	Wyoming Department of Environmental Quality (WDEQ) Rules of Practice and Procedure, as amended February 14, 1994, Chapter III; HWRR, Chapter 1, Sections 2(a), 2(b), 3, 4, and 260. [More stringent provision: 260(b)(ii).]  <i>Note:</i> (1) Section 2 addresses: (a) the date of the Federal regulations that Wyoming has incorporated by reference; (b) Federal rules explicitly excluded from the State’s rule; (c) references to the State’s more stringent and broader in scope provisions; and (d) the availability of all referenced Federal and Wyoming



Description of Federal requirement	Analogous state authority <sup>1</sup>
	<p><i>materials.</i></p> <p>(2) <i>Section 3 addresses the substitution of State terms for Federal terms in order to make the Federal regulations incorporated by reference specific to Wyoming.</i></p> <p>(3) <i>Section 4 addresses Wyoming-specific definitions and provisions needed to provide additional clarity to the State's regulations.</i></p>
<p>3. 40 CFR part 261, except for the following provisions: 261.4(b)(11), 261.4(b)(16), 261.4(b)(17), subpart H, Appendix IX, the language “in the Region where the sample is collected” in 261.4(e)(3)(iii), and the changes associated with 73 FR 62668, October 30, 2008 (Definition of Solid Waste).</p>	<p>HWRR, Chapter 1, Sections 2(a), 3(a)(x), 3(a)(xiii) and 261. [More stringent provision: 261(a)(iii) and 261(b).]</p>
<p>4. 40 CFR part 262, except for the following provisions: 262.10(j) and (k), 262.34(j) – (l), subparts I and J, and the language “for the Region in which the generator is located” in 40 CFR 262.42(a)(2) and 262.42(b).</p>	<p>HWRR, Chapter 1, Sections 2(a) and 262. [More stringent provisions: 262(a)(iii) and 262(a)(v).]</p>
<p>5. 40 CFR part 263, except for the following provision: 263.20(a)(3) which addresses compliance dates for manifest form revisions for dates which have passed.</p>	<p>HWRR, Chapter 1, Sections 2(a) and 263. [More stringent provisions: 263(a)(iv).]</p>
<p>6. 40 CFR part 264, except for the following provisions: 40 CFR 264.1(f), 264.1(g)(12), 264.1(j), 264.15(b)(5), 264.70(b), 264.73(b)(17), 264.101(d), 264.147(k), 264.149, 264.150, 264.195(e), 264.301(l), 264.314(e), 264.554(l)(2), 264.1030(d), 264.1050(g), and 264.1080(e) through (g).</p>	<p>HWRR, Chapter 1, Sections 2(a) and 264(a)-(d); 264(e)(i) (except the citation “W.S. 35-11-1607” and the phrase “or signed remedy agreement pursuant to W.S. 35-11-1607” in the first sentence of 264(e)(i); 264(e)(iii)(A) and (B); and 264(f) through 264(m). [More stringent provisions: 264(a)(iv); 264(a)(v); 264(a)(vii); 264(a)(x); 264(a)(xi); 264(h); 264(i); 264(l); and 264(m).] [Broader-in-scope provisions: 264(e)(i) and (ii).]</p>
<p>7. 40 CFR part 265, except for the following provisions: Subpart R, 40 CFR 265.1(c)(4), 265.15(b)(5), 265.15(c)(15), 265.70(b), 265.147(k), 265.149, 265.150, 265.195(d),</p>	<p>HWRR, Chapter 1, Sections 2(a) and 265. [More stringent provisions: 265(a)(iv) through (vi); 265(a)(ix); 265(a)(x); 265(e); and 265(f).]</p>

<b>Description of Federal requirement</b>	<b>Analogous state authority<sup>1</sup></b>
265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).	
8. 40 CFR part 266	HWRR, Chapter 1, Sections 2(a) and 266. [More stringent provisions: 266(b)(i) through (b)(vi); and 266(b)(viii).]
9. 40 CFR part 267, except 267.150.	HWRR, Chapter 1, Sections 2(a) and 267. [More stringent provisions: 267(a)(ii); 267(a)(iii); and 267(b).]
10. 40 CFR part 268, except 268.5, 268.6, 268.13, 268.42(b), 268.44(a)-(g), and 268.44(o).	HWRR, Chapter 1, Sections 2(a) and 268.
11. 40 CFR part 270 except for the following provisions: 270.1(c)(1)(iii), 270.1(c)(2)(ix), 270.11(d)(2), 270.13(k)(7), 270.14(b)(18), 270.42(l), 270.42 (Appendix I, Part A, Entries 9 and 10, and Part O Entry (1)(a)-(d)), 270.51, 270.60(a), 270.64, 270.68, 270.73(a), subpart H (40 CFR 270.79 - 270.230), 270.260(h), and 270.290(r).	HWRR, Chapter 1, Sections 2(a), 3(a)(ii), 3(a)(v), 3(a)(vi) through 3(a)(ix), and 270 (except 270(n). [More stringent provisions: 270(a)(iv); 270(a)(ix); 270(a)(x); 270(a)(xii); 270(a)(xx); 270(b) through (e); 270(h); and 270(j) through (m).] [Broader-in-scope provision: 270(n).]
12. 40 CFR part 273	HWRR, Chapter 1, Sections 2(a) and 273.
13. 40 CFR part 279	HWRR, Chapter 1, Sections 2(a) and 279.

<sup>1</sup> Items described as more stringent or broader-in-scope are discussed in detail in Section H of this rule.

## **H. Where are the revised State rules different from the Federal rules?**

1. EPA considers several Wyoming requirements to be more stringent than the Federal requirements. These requirements are part of Wyoming's authorized program and are federally enforceable. The specific more stringent provisions include, but are not limited to, the following:

- a. *Permitting Program and Procedures:* At 124(a)(v), 124(b)(i), 124(b)(iii) second sentence and 124(b)(iii)(A) through (C), 124(b)(iv), 124(d)(i), 124(d)(ii), 124(e)(iii), 270(a)(iv), 270(a)(ix), 270(a)(x), 270(a)(xii), 270(a)(xx), 270(b), 270(c)(i)(A), 270(c)(i)(B), 270(d)(i) introductory paragraph and (i)(A), 270(d)(i)(B), 270(d)(i)(C), 270(e), 270(h)(i), and 270(m) Wyoming has additional permitting procedure

- requirements (e.g., Wyoming's section 124(e)(iii) is more stringent than 40 CFR 124.12(a)(3) and (a)(4) in that the State requires a hearing to be scheduled within 20 days after the close of the public comment, unless a different schedule is deemed necessary by the Council. The State also requires a public notice to be published once a week for two consecutive weeks immediately prior to the hearing in the county where the applicant plans to locate the facility);
- b. *Notifications and Reports:* At 261(a)(iii), 262(a)(iii), 262(a)(v), 263(a)(iv), 264(a)(v), 265(a)(iv), 265(a)(v), 265(a)(ix), and 267(a)(iii), Wyoming requires copies of necessary notifications and reports be made and submitted to the Director or State agency in addition to the required Federal notification or reporting;
  - c. *Location Standards:* At both 264(a)(iv) and 267(a)(ii), Wyoming prohibits new facilities from being located in a 100-year floodplain;
  - d. *Health and Environment Risk Assessment and Minimization:* At 264(a)(vii), 264(l), 264(m), and 270(l) the State requires facility owners or operators to demonstrate the ability to take and continue to take steps to prevent threats to human health and the environment including additional provisions for the assessment of health risks from facilities associated with normal operation or failure of a hazardous waste management facility pollution control or containment system;
  - e. *Landfill Prohibition:* At 264(a)(x), 264(a)(xi), and 265(a)(x) Wyoming prohibits the placement of nonhazardous liquid waste in landfills;
  - f. *State Registration of Professional Engineers and Geologists:* At 264(h), 264(i), 265(e), 265(f), 267(b), 270(j), and 270(k), Wyoming requires both professional engineers and professional geologists to be registered in the State when referring to

activities requiring Professional Engineer or Professional Geologist certification;

- g. *Military Munitions*: At 266(b)(i), 266(b)(iii) through (v), and 266(b)(viii) Wyoming has additional requirements for military munitions (e.g., at 266(b)(i) the State requires the operator of the range to notify the Director in writing if remedial action for these types of waste is infeasible); and
- h. *Remedial Action Plans (RAPs)*: Wyoming has chosen not to adopt the less stringent Remedial Action Plan (RAP) alternate permit for remediation management sites addressed in the final rule published on November 30, 1998 (63 FR 65874).

2. The EPA considers several State requirements to be broader-in-scope than the Federal program. Although a facility must comply with these requirements in accordance with State law, they are not RCRA requirements. Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. The specific broader-in-scope provisions include the following:

- a. *Wyoming Voluntary Remediation Program*: At 264(e)(i) and (ii) [with respect to the Wyoming Voluntary Remediation Program only] the State makes the Corrective Action Management Unit program requirements available to participants in the State of Wyoming Voluntary Remediation Program who would otherwise not be regulated under the RCRA program; and
- b. *Permitting Program and Procedures*: At 270(n), Wyoming requires an applicant for a permit to demonstrate fitness by requiring that the past performance of the applicant or any partners, executive officers, or corporate directors, be reviewed.

Wyoming did not change any previously more stringent or broader-in-scope provisions to be equivalent to the Federal rules.

3. The EPA will continue to implement certain Federal requirements that the EPA cannot delegate to states. The requirements include: 1) certain provisions in 40 CFR §§ 261.39(a)(5) and 261.41, part 262, subparts E, F and H, part 263, subpart B, §§ 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), and 265.71(d) regarding governmental oversight of exports and imports of hazardous waste; (2) manifest registry functions in 40 CFR part 262, Subpart B; 3) 268.5, 268.6, 268.42(b), and 268.44(a)-(g) regarding land disposal restrictions; and 4) 279.82(b) regarding State petitions to allow use of used oil as a dust suppressant.

**I. Who handles permits after the authorization takes effect?**

Wyoming will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until Wyoming has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Wyoming is not yet authorized.

**J. How does this action affect Indian Country (18 U.S.C. section 1151) in Wyoming?**

This program revision does not extend to “Indian country” as defined in 18 U.S.C. section 1151.

In excluding Indian country from the scope of this program revision, the EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian country. Should the State of Wyoming choose to seek program authorization within Indian country, the EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to

enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, and that such approval would constitute sound administrative practice.

## **II. Corrections**

In the entry for the Checklist 142B authorization table published for Wyoming as part of the February 25, 1999 (64 FR 9278) proposed rule (final rule published on August 6, 2001 (66 FR 40911)), the citation “Ch. 13, S1(a)(vi)(A)” should be corrected to read “*Ch. 13, S1(a)(vi)(I)*”.

## **III. Incorporation by Reference**

### **A. What is codification?**

Codification is the process of including the statutes and regulations that comprise the State’s authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize state hazardous waste management programs. The state regulations authorized by the EPA supplant the Federal regulations concerning the same matter with the result that after authorization the EPA enforces the authorized regulations. Infrequently, state statutory language which acts to regulate a matter is also authorized by the EPA with the consequence that the EPA enforces the authorized statutory provision. The EPA does not authorize state enforcement authorities and does not authorize state procedural requirements. The EPA codifies the authorized state program in 40 CFR part 272 and incorporates by reference state statutes and regulations that make up the approved program which is federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

## **B. What decisions have we made in this rule?**

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Wyoming rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

The purpose of this **Federal Register** document is to codify the EPA's authorization of Wyoming's base hazardous waste management program and its revisions to that program. The codification reflects the State program that would be in effect at the time the EPA's authorized revisions to the Wyoming hazardous waste management program addressed in this direct final rule become final. This action does not reopen any decision the EPA previously made concerning the authorization of the State's hazardous waste management program. The EPA is not requesting comments on its decisions published in the **Federal Register** documents referenced in Section I.F of this preamble concerning revisions to the authorized program in Wyoming.

The EPA is incorporating by reference the EPA's approval of Wyoming's hazardous waste management program by adding Subpart ZZ to 40 CFR part 272. Section 272.2551 incorporates by reference Wyoming's authorized hazardous waste regulations, as amended effective March 18, 2015. Section 272.2551 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, section 272.2551 references the Memorandum of Agreement, the Attorney General's Statements

and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

**C. What is the effect of Wyoming’s codification on enforcement?**

The EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized states. With respect to enforcement actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state analogs to these provisions. Therefore, the EPA is not incorporating by reference Wyoming’s inspection and enforcement authorities nor are those authorities part of Wyoming’s approved State program which operates in lieu of the Federal program. 40 CFR 272.2551(c)(2) lists these authorities for informational purposes, and because the EPA also considered them in determining the adequacy of Wyoming’s procedural and enforcement authorities. Wyoming’s authority to inspect and enforce the State’s hazardous waste management program requirements continues to operate independently under State law.

**D. What state provisions are not part of the codification?**

The public is reminded that some provisions of Wyoming’s hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are “broader-in-scope” than RCRA subtitle C (see 40 CFR 271.1(i));



(2) Federal rules for which Wyoming was previously authorized but which were later vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144; June 27, 2014). See 80 FR 18777 (April 8, 2015).

(3) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader-in-scope" than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, the EPA lists in 40 CFR 272.2551(c)(3) the Wyoming regulatory and statutory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by the EPA, the State may enforce such provisions under State law.

#### **E. What will be the effect of codification on Federal HSWA requirements?**

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which the EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, the EPA will enforce those Federal HSWA standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. The EPA has authority to implement HSWA requirements in all states, including states with authorized hazardous waste management programs, until the states become authorized for such requirements or prohibitions, unless the EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by the EPA as optional or as less stringent,

supersedes any less stringent or inconsistent state provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing state requirements may be similar to the HSWA requirements implemented by the EPA. However, until the EPA authorizes those state requirements, the EPA enforces the HSWA requirements and not the state analogs.

#### **IV. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore this action is not subject to review by OMB. This action authorizes and codifies State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes and codifies State requirements as part of the State RCRA hazardous waste program

without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately

high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

## **List of Subjects**

### **40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

### **40 CFR Part 272**

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

**Authority:** This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 11, 2016.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), the EPA is granting final authorization under 40 CFR part 271 to the State of Wyoming for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

**PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS**

1. The authority citation for part 272 continues to read as follows:

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Amend subpart ZZ by adding § 272.2551 to read as follows:

**§ 272.2551 Wyoming State-Administered Program: Final Authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Wyoming has final authorization for the following elements as submitted to the EPA in Wyoming's base program

application for final authorization which was approved by the EPA effective on October 18, 1995. Subsequent program revision applications were approved effective on August 6, 2001 and **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF FEDERAL REGISTER]**.

(b) The State of Wyoming has primary responsibility for enforcing its hazardous waste management program. However, the EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. sections 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The Wyoming regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq. This incorporation by reference is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Wyoming regulations that are incorporated by reference in this paragraph from Wyoming Secretary of State's Office, The Capitol Building, Room B-10, 200 West 24<sup>th</sup> Street, Cheyenne, Wyoming 82002-0020, (Phone: 307-777-5407). You may inspect a copy at the EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, phone number (303) 312-6231, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The Binder entitled "EPA-Approved Wyoming Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated March, 2016.

(ii) [Reserved]

(2) The EPA considered the following statutes and regulations in evaluating the State program but is not incorporating them herein for enforcement purposes:

(i) Wyoming Statutes Annotated (W.S.), as amended, 2015 Edition, Title 16, City, County, State, and Local Powers: Chapter 1, Intergovernmental Cooperation, section 16-1-101; Chapter 3, Administrative Procedure, sections 16-3-101(b)(vi), 16-3-103(h), 16-3-107(k); Chapter 4, Uniform Municipal Fiscal Procedures, Public Records, Documents and Meetings, sections 16-4-201, 16-4-203(d)(i), 16-4-203(d)(v).

(ii) W.S., as amended, 2015 Edition, Title 35, Public Health and Safety: Chapter 11, Environmental Quality, Article 1, General Provisions, sections 35-11-102, 35-11-103(a), 35-11-103(d)(i), 35-11-103(d)(ii), 35-103(d)(vii), 35-11-104 through 35-11-106, 35-11-108 through 35-11-115; Article 5, Solid Waste Management, sections 35-11-501 through 35-11-503 (except 35-11-503(b) and (c)), 35-11-504 through 35-11-506, 35-11-508, 35-11-509, 35-11-514, 35-11-516, 35-11-518 through 35-11-520; Article 9, Penalties, sections 35-11-901(a), (j), and (k); Article 11, Miscellaneous Provisions, sections 35-11-1101, 35-11-1105(d), 35-11-1106(a)(iv); Article 16, Voluntary Remediation of Contaminated Sites, section 35-11-1607(e).

(iii) Wyoming Rules of Civil Procedure, as amended, Rule 24.

(iv) Wyoming Hazardous Waste Management Rules, Chapter 1, General Provisions: sections 1(a) through (d); 2(c) and (d); 124 (except 124(a)(v)); 260(b)(ii); and 270(o) through 270(q).

(v) Wyoming Department of Environmental Quality, Rules of Practice and Procedure, as amended February 14, 1994, Chapter III.

(3) The following statutory provisions are broader in scope than the Federal program, are

not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) W.S., as amended, 2015 Edition, Title 35, Public Health and Safety: Chapter 11, Environmental Quality, Article 5, Solid Waste Management, section 35-11-517; Chapter 12, Industrial Development and Siting, sections 35-12-101, et seq.

(ii) Wyoming Hazardous Waste Management Rules, Chapter 1, General Provisions: sections 264(e)(i) [with respect to the Wyoming Voluntary Remediation Program only]; 264(e)(ii); and 270(n).

(iii) [Reserved]

(4) Unauthorized state amendments. (i) Wyoming has adopted but is not authorized for the following Federal final rules:

(A) Imports and Exports of Hazardous Waste: Implementation of OECD Council Division [61 FR 16290, 04/12/96] (HSWA - Not delegable to States);

(B) Hazardous Waste Combustors; Revised Standards [63 FR 33782, 6/19/98] (Non-HSWA – Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144; June 27, 2014);

(C) Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas [73 FR 52, 1/2/08] (Non-HSWA - Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144; June 27, 2014);

(D) OECD Requirements; Export Shipments of Spent Lead Acid Batteries [75 FR 1236, 1/8/10] (Non-HSWA – Not delegable to States);

(E) Withdrawal of the Emission Comparable Fuel Exclusion [75 FR 33712, 6/15/10] (Non-HSWA – Vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C.



Cir. No. 98-1379 and 08-1144; June 27, 2014); and

(F) Revisions to the Definition of Solid Waste [73 FR 64668, 10/30/08].

(ii) Those Federal rules written under RCRA provisions that predate HSWA (non-HSWA) which the State has adopted, but for which it is not authorized, are not federally enforceable. In contrast, the EPA will continue to enforce the Federal HSWA standards for which Wyoming is not authorized until the State receives specific authorization from EPA.

(5) Memorandum of Agreement. The Memorandum of Agreement between the EPA, Region 8 and the State of Wyoming, signed by the State of Wyoming Department of Environmental Quality on July 19, 2012, and by the EPA Regional Administrator on July 27, 2012, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(6) Statement of legal authority. “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Wyoming on July 14, 1995, and revisions, supplements and addenda to that Statement dated December 9, 1997 and May 11, 2015, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(7) Program Description. The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 et seq.

3. Appendix A to part 272 is amended by adding the listing for “Wyoming” to read as follows:

Appendix A to Part 272—State Requirements

\* \* \* \* \*

## Wyoming

The regulatory provisions include:

Wyoming Hazardous Waste Management Rules, as amended effective March 18, 2015, Chapter 1, General Provisions: sections 2(a) and (b); 3; 4; 124(a)(v); 260 (except 260(b)(ii)); 261; 262; 263; 264(a) through 264(d), 264(e)(i) (except the citation “W.S. 35-11-1607” and the phrase “or a signed remedy agreement pursuant to W.S. 35-11-1607” in the first sentence), 264(e)(iii)(A) and (B), 264(f) through 264(m); 265; 266; 267; 268; 270(a) through 270(m); 273; and 279.

Copies of the Wyoming regulations that are incorporated by reference are available from Wyoming Secretary of State’s Office, The Capitol Building, Room B-10, 200 West 24<sup>th</sup> Street, Cheyenne, Wyoming 82002-0020, (Phone: (307) 777-5407).

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